MOHD ALI JAHN BIN YUSOP SAHIBJAHN & ANOR.

v.

ZALEHA BT MAT ZIN & ANOR

HIGH COURT MALAYA, MALACCA
DATUK WIRA HJ. MOHD. NOOR BIN HJ. AHMAD J
[CIVIL SUIT NO. 42 OF 1985]
16 DECEMBER 1994

LAND LAW: *Sale of land - Sale involved interest of minor - Whether void - Whether Court to look backward to protect interest of minor - Agreement executed in 1948 in Melaka - Applicable law.*

By an agreement executed in 1948, the plaintiffs' father, who was registered as guardian in the title of a piece of land, sold the said land to the defendants' father, one Mohamed Zin (the purchaser). By this agreement the plaintiffs' father guaranteed that the plaintiffs, who were minors then, would execute the transfer of the land to the purchaser when they attained the age of majority. Title to the land and possession thereof were then given to the purchaser, whose family, including the defendants, started and continued to occupy the land until this day. Quit rent was paid by the purchaser's family until 1990 and by the plaintiffs as well since 1984.

The plaintiffs, after attaining their age of majority, refused to execute the transfer of the said land and had instead sued the purchaser's widow, one Hajjah Nyemah, for vacant possession. Hajjah Nyemah counterclaimed for specific performance or damages for breach of contract, but in counterclaiming thus, she did not plead that she was the personal representative of the estate of the purchaser, deceased. Hajjah Nyemah had since died, and the present defendants were sued as the legal representatives of the estate of the said Hajjah Nyemah.

Before the learned Judge the primary issues that arose were:

1. Whether the said 1948 agreement was enforceable.
2. Whether the defendants, in the circumstances, had *locus standi* to proceed with the counterclaim filed by Hajjah Nyemah aforesaid.

Held:

[1] It is trite law that even when a minor himself signs an agreement for sale of land or to mortgage his land it is *void ab initio* and the agreement is absolutely void. It is also trite that the Courts would always bend backwards to protect the interests of minors.

[2] In the present case, it was clearly endorsed on the title of the land that the plaintiffs' father, the guardian, held the said land as guardian of the plaintiffs and on the facts the purchaser knew that the guardian held the said land as such. This being the case the Guardianship of Infants Ordinance 1934 (now repealed) must be the relevant law applicable to the agreement.

[3] In the light of the 1934 Ordinance, particularly s. 15 thereof, which required the guardian to seek leave of the Court or a Judge in order to deal with the land, the purported sale herein is void for reason that no such leave was ever being sought by the said guardian. This agreement is therefore unenforceable notwithstanding that the plaintiffs had filed this claim some years later after attaining the age of majority.

[4] The original defendant Hajjah Nyemah did not plead in her counterclaim that she was the personal representative of the purchaser by virtue of any Letters of Administration. As she failed to do so she was not entitled to stand in the shoes of the purchaser and claimed the said land on behalf of the purchaser's estate. That being the case, in her personal capacity there is no privity of contract between her and either the guardian or the plaintiffs who were the registered owners of the said land. In the eyes of the law she was a trespasser or unlawful occupier of the said land. It therefore follows that there was also no privity of contract between the present defendants, they being the personal representatives of Hajjah Nyemah, and either the guardian or the plaintiff. The defendant thus were also trespassers or unlawful occupiers of the said land.

[5] The fact that the defendants had paid quit rent on the said land for a number of years does not help them because the fact of who pays the quit rents for the land does not point to who is the real owner of the land. Further as trespassers or unlawful occupiers of the said land the defendants acquired no equity by having expended money in demolishing the old house and rebuilding new ones on the said land knowing fully well that the plaintiffs' claim was pending in Court.

[Judgment for plaintiffs. Defendants' counterclaim dismissed]

Cases referred to:
Wan Kalsom Binti Haji Wan Jusoh & Ors. v. Wan Su Bin Wan Mat Min (unreported Federal Court Civil Appeal No. 62/1971.) ***(foll)***
Leha Binte Jusof v. Awang Johari Bin Hashim [1978] 1 MLJ 202 ***(foll)***
Tan Hee Juan By His Next Friend Tan See Bok v. Teh Boon Keat, Lai Soon [1934] MLJ 96 ***(foll)***
Syed Ahamed Bin Mohamed Alhabshee v. Puteh Binte Sabtu [1922] 5 FMSLR 243 ***(refd)***
Chan Sio v. Dan Sin Wah [1955] MLJ 137 ***(refd)***
S.Pathmanathan v. Amaravathi & Ors. [1979] 1 MLJ 38 @ 40 ***(foll)***
Yong Yin Siew v. Chong Sheak Thow [1988] 3 MLJ 115 @ 118 ***(foll)***

For the plaintiffs-Thara Singh Sidhu; M/s. Thara Singh Sidhu & Co.
For the defendants-Goh; M/s. Hamazah Daud Daros & Siti Nor

JUDGMENT

Hj. Mohd. Noor Bin Hj. Ahmad J:
The plaintiffs claimed, *inter alia*, for vacant possession in respect of a piece of land on Lot 405, Mukim of Bukit Piatu, Melaka held under Geran Mukim No. MCL 275 (hereinafter referred to as the said land'). The defendants counterclaimed, amongst other things, damages for breach of contract or specific performance.

Briefly, the facts reveal that the father of the plaintiffs, Yusof bin Sahib Jahn (now deceased) was registered in the little to the said land as guardian (hereinafter referred to as 'the guardian'). On 28 October 1948 under an agreement (hereinafter referred to as the said Agreement') the guardian sold the said land to Mohamed Zin bin Mohamed Amin (now deceased, hereinafter referred to as 'the purchaser') the husband of the original defendant (Hajjah Nyemah, now deceased) and the father of the present defendants. The present defendants are being sued in the capacity as the legal representatives of the estate of Hajjah Nyemah (their mother). Under the said Agreement -

(i) The purchase price of RM500.00 was paid to and received by the guardian.

(ii) The guardian agreed to execute the necessary transfer of the said land to the purchaser or his nominee as soon as the then existing moratorium was lifted.

(iii) The guardian guaranteed that in the event of the guardian not authorised to execute the necessary transfer, the plaintiffs who were minors then would execute the necessary transfer as soon as they attained the age of majority.

Title to the said land and possession thereof were given to the purchaser whose family continued to live in the house built and rebuilt by the family on the said land until this day. Quit rent on the said land was paid by the purchaser and his family until 1990 and the plaintiffs also paid the quit rent from 1984 until today. The necessary transfer was never executed by the guardian nor by the plaintiffs even though they had attained the age of majority.

From the facts and the pleadings, it is manifestly evident that -

(1) The sale of the said land was based purely on the said Agreement entered into by the guardian.

(2) The original defendant Hajjah Nyemah did not plead in her counterclaim that she was the personal representative of the estate of the purchaser.

(3) The present defendants cited themselves as the personal representatives of Hajjah Nyemah deceased in respect of the counterclaim.

These are two main issues to be decided.

(1) Whether the said Agreement is enforceable?

(2) Whether the defendants have *locus standi* to proceed with the Counterclaim?

Issue (1)

(1) It is trite law that even if a minor himself signs an agreement for sale of land or to mortgage his land it is *void ab initio*, that is to say, the agreement is absolutely void. It is also trite law that the Courts would always bend backwards to protect the interests of minors. In *Wan Kalsom Binti Haji Wan Jusoh & Ors v. Wan Su Bin Wan Mat Min* (unreported Federal Court Civil Appeal No. 62/1971, Kota Bharu) Suffian FJ (as he then was) held that a contract entered into by the vendor, who was a minor, to sell a piece of land to the plaintiff was void (see the Sale and Purchase of Real Property in Malaysia by Visu Sinnadurai @ 118). Similarly, in *Leha Binte Jusoh v. Awang Johari Bin Hashim* [1978] 1MLJ 202, the Federal Court held that an agreement entered into by the minor to purchase certain lands was also void. [see also *Tan Hee Juan by his next friend Tan See Bok v. Teh Boon Keat, Lai Soon* [1934] MLJ 96; *Syed Ahamed Bin Mohamed Alhabshee v. Puteh Binte Sabtu* [1922] 5 F.M.S.L.R. 243; *Chan Sio v. Dan Sin Wah* [1955] MLJ 137].

(2) On the title to the said land it was clearly endorsed that the guardian held the said land as guardian of the plaintiffs and on the facts, I am satisfied that the purchaser knew the guardian held the said land as such. Therefore, the relevant law then applicable to this case was the Guardianship of Infants Ordinance (SS Ordinance No.11 of 1934 Cap.50, now repealed). Under ss. 5 and 4, the father of an infant shall ordinarily be the guardian of the infant's person and property and the guardian shall have the control and management of the infant's property, and shall deal therewith as carefully as a man of ordinary prudence would deal with his own property, and may, subject to the Ordinance, do all acts which are reasonable and proper for the realisation or protection of the infant's property. Under s. 15, the guardian of an infant shall not, without the leave of the Court or a Judge sell, mortgage, exchange, or otherwise part with the possession of any of the moveable or immovable property of the infant, or

lease any land belonging to the infant for a term exceeding one year; and any disposal of an infant's property in contravention of the section might be declared void, and on such declaration the Judge might make such order as appeared requisite for restoring to the infant's estate the property so disposed of. Section 17 authorised the guardian to support the infant out of the income of the infant's property but not out of the capital of the infant's property without an order of the Judge.

(3) In the light of the above, as the sale of the said land was done by the guardian without any leave of the Court or a Judge, I am of the view that the purported sale can be declared void. And as the plaintiffs had filed this claim, though some years later after attaining the age of majority, the answer to this issue should be in the negative.

Issue (2)

(1) As I have said earlier, the original defendant Hajjah Nyemah did not plead in her counterclaim that she was the personal representative of the purchaser by virtue of any Letters of Administration. As she failed to do so, my view is that she was not entitled to stand in the shoes of the purchaser and claimed the said land on behalf of the purchaser's estate. That being the case, in her personal capacity there is no privity of contract between her and either the guardian or the plaintiffs who were the registered owners of the said land. In the eyes of the law, she was a trespasser or unlawful occupier of the said land. Further, on the death of Hajjah Nyemah, the present defendants defended the action in their capacities as the personal representatives of Hajjah Nyemah, deceased. On this fact, I am of the opinion that there is also no privity of contract between the present defendants and either the guardian or the plaintiffs because Hajjah Nyemah was not a party to the said Agreement. They are also trespassers or unlawful occupiers of the said land. And furthermore, as the guardian signed the said Agreement and that he or his estate is not before the Court, the present defendants cannot proceed with the counterclaim because the proper party is not before the Court.

(2) In the case of *S. Pathmanathan v. Amaravathi & Ors.* [1979] 1MLJ 38, one Kathamuthu agreed to purchase a piece of land from the plaintiff for RM18,000.00. The land was subject to a charge in favour of a finance company in the sum of RM9,125.33. The said Kathamuthu agreed to pay by way of instalment the sum of RM9,125.33 which was to be set-off against the purchase price of RM18,000.00. He died before he could complete the purchase, and left a balance of RM4,000.00 still unpaid. The defendants, members of the deceased's family, who were in possession of the said property were unable to pay the balance of the purchase price. The plaintiff claimed for possession and damages for unlawful occupation. The letters of administration had not been extracted by the defendants because they could not find sureties. The issue before the Court was whether the plaintiff could recover possession of the said property from the defendants as individuals who were not privy to the contract for sale of it. Gunn Chit Tuan J (as he then was) said -

> It was clear that this was not a suit by either the plaintiff or the 2nd. defendant and his brother as the legal representatives of their deceased father's estate, for specific performance of the contract in question The Three defendants in this suit were not party to the contract between the plaintiff and the late S. Kathamuthu" (@ 40 right column paragraphs CD & EF).

Judgment was given for the plaintiff.

(3) In view of the above, the answer to this issue should also be in the negative.

In my view, the fact that the defendants had paid quit rent on the said land for a number of years does not help them because, as decided in *Yong Yin Siew v. Chong Sheak Thow* [1988] 3 MLJ 115 @ 118 right column paragraph D that the fact of who pays the quit rents for the land does not point to who is the real owner of the land. Further, as trespassers or unlawful occupiers of the said land the defendants acquired no equity by having expanded money in demolishing the old house and rebuilding new ones on the said land knowing fully well that the plaintiffs' claim was pending before the Court.

Therefore, judgment is hereby given for the plaintiffs as prayed with costs. As there was a long delay on the part of the plaintiffs in bringing the action since attaining their age of majority, my view is that, on ground of fairness the plaintiffs ought not to be awarded damages allegedly sustained by them after they had attained the age of majority. The fair amount should be damages in the form of loss of rental at RM100.00 per month for the duration of 10½ years (half of the minority age period for Muslims in the then Straits Settlement) which is RM12,600.00 with interest at the rate of 8% per annum. The counterclaim is hereby dismissed with costs.